



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF APRIL 14, 2005**

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan, King, Lydon, Sharma, and Weaver

ABSENT: Lorenz

STAFF PRESENT: Tom Williams, Special Assistant
Larissa Seto, Senior Deputy City Attorney II
Cliff Nguyen, Planner II
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Meeting of March 24, 2005 with corrections on Page 5 and Page 19.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 3, AND 4.

IT WAS MOVED (KING/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1, 3, AND 4.

Item 1. SANDHU RESIDENCE – East King – (PLN2005-00058) - to consider a Conditional Use Permit and Preliminary Grading Plan for the development and use of a 16,214 square foot single-family residence located in the Hill Area of the Niles Planning Area. A Mitigated Negative Declaration has been prepared for this project.

**ADDITION TO PAGE 14 OF REPORT —RESPONSE TO APPLICANT'S ATTORNEY'S
APRIL 5, 2005 LETTER.**

The applicant's attorney raises two issues in the April 5, 2005 letter (attached as project enclosure) to the Planning Commission, which were not directly discussed in the published staff report. This is to clarify and provide background for those two issues relating to the definitions of ridgelines and hilltops in Section 8 (d) of Measure T.

Ridgelines:

The applicant's attorney argues that the Measure A definition of ridgeline should not be altered or amended for Measure T. It is staff's contention that if the initiative actually intended to maintain the Measure A definition, as alleged by the applicant's counsel, the Measure T language would have been identical to that in Measure A. But, because Measure T changed the wording to the plural, "ridgelines" (emphasis added), staff concludes that the language was intentional and more than one ridgeline was intended by Measure T. The

plural interpretation of "ridgelines" is consistent with both the plain meaning of the language, and also avoids making words surplusage, which are principles which guide interpretation of an initiative. Consequently, staff drafted, and the Planning Commission recommended that the Council adopt, the following definition for the Measure T term "ridgelines".

"Ridgeline, other" shall mean one of the other ridgelines above the Toe of the Hill. These include the prominent ridgelines located easterly of the main ridgeline as viewed from public places as well as those tributary or branch ridgelines of both the main ridgeline and the other prominent ridgelines.

Hilltops:

Similarly, Measure T introduced a term that was not included in Measure A: hilltops. The applicant's attorney asserts that Measure T did not intend to add or change the Measure A definition of ridgeline that had been included in the Fremont Municipal Code (Section 8-2185.8), but rather reflect the "possibility that an observer who looks at (for example) Mission Peak from one and one-half miles away might say that he or she is not seeing a "ridge" at that point, but a hill."

Staff again recommends that if Measure T intended to retain only the Measure A terminology, Measure T would not have added the new word "Hilltops" to describe "Areas of Special Environmental Concern – Further Safeguards" (Section 8). Therefore, staff proposed an alternative definition of "Hilltops" to the Planning Commission in July 2004, along with an alternative supported by the applicant and his attorney. Staff believes that the proposed definition for "Hilltops" below is consistent with the plain meaning intended by the voter-adoption of Measure T, which the Planning Commission considered and then recommended the City Council adopt.

"Hilltops" shall mean prominent locations, which are noticeably higher in elevation than the immediately surrounding terrain. Hilltops may occur on or along a ridgeline but also may occur above or below a ridgeline in the form of knolls, rounded hills, and the top or peak of a hill."

The City Council was presented this recommendation in a Work Session on December 14, 2004, and directed staff to come back to the Council with the full package of changes incorporated into an ordinance. This ordinance will be drafted after the City Council considers the Toe of the Hill line and other implementation policies associated with Measure T.

Commissioner Weaver announced that she would not be present at the April 28, 2005 meeting.

AT THE APPLICANT'S REQUEST, CONTINUE THE CONSIDERATION OF THIS ITEM TO APRIL 28, 2005.

- Item 3. MATTA DEVELOPMENT – 34479 Fremont Blvd – (PLN2003-00308)** – to consider a conditional use permit application for modifications to the separation and yard requirements for a 4-unit residential project in the R-G-24 zoning district in the Northern Plain Planning Area. This project is categorically exempt from CEQA per Section 15332, In-fill Development Projects.

HOLD PUBLIC HEARING;

AND

FIND PLN2003-00308 IS EXEMPT FROM CEQA PER SECTION 15332;

AND

FIND PLN2003-00308 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE CONDITIONAL USE PERMIT PLN2003-00308, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

- Item 4. **REEVES RESIDENCE - 41276 Vargas Road - (PLN2004-00292)** - to consider a conditional use permit application for the demolition of an existing residence and the construction of a new 4,343 square foot residence in the Mission San Jose Planning Area. This project is categorically exempt from CEQA per Section 15303, New Construction or Conversion of Small Structures.

AT THE REQUEST OF THE APPLICANT, CONTINUE TO A DATE UNCERTAIN.

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Lorenz
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 2. **CITY BEACH, INC. – 4020 Technology Place – (PLN2005-00067)** - to consider a Finding and referral of an Amendment to a previously approved Zoning Administrator permit to allow ancillary live or recorded entertainment in conjunction with an existing recreational facility with a full-service restaurant located in the Industrial Planning Area. A Mitigated Negative Declaration has been previously prepared for this project. Because no new impacts have been identified, no further environmental review is necessary.

Cary Riter, owner and applicant, stated that his business opened approximately three years ago with the goal of providing health family activities for their customers, such as rock climbing, billiards, volleyball, ping pong, bocce ball, arcades, and a restaurant and bar. Over the past three years, he became aware that occasional live music would enhance his business. Their intent was never to be in the "night club business." In fact, it was discouraged, as that kind of crowd was unruly and caused problems.

Commissioner Chan had a number of questions and comments and Mr. Riter answered:

- *Live music between 10:00 p.m. and 2:00 p.m. did not seem to be something that would contribute to a family environment*
Agreed.
- *The website and exterior signs stated that live music and a DJ were available on weekends. How was this application different?*
Special Assistant Williams replied that approval would legitimize the present use.
- *How would the capacity of 280 people be monitored?*

Different areas had different occupancy rates. The restaurant/bar did not have a formal dance floor. The area used for dancing was a cement area outside of the restaurant. Six certified, State licensed, security guards were mandated through this proposal to control a 450-square foot portion of the facility that could be used for dancing. Problems sometimes occurred when a facility was rented out for a particular function. Therefore, he never rented any portion of his facility. Only the billiards and restaurant and bar operated after 10:00 p.m.

- *Was a cover charge planned?*
There would no cover charge. Identification was checked.
- *What kind of identification was accepted? Was a scanner used? Was military, foreign, out of state, driver's license identification accepted?*
No scanner was used. Security personnel checked identification on Friday and Saturday nights. After 9:00 p.m. minors were not allowed in the "hub area," but they were allowed in the restaurant.
- *Did he carry additional insurance?*
Liability insurance associated with the liquor license was required.

Commissioner Lydon asked for clarification concerning how minors were handled in the facility. Could minors age 18 and below eat in the restaurant?

Mr. Riter replied that any minor could use the restaurant. He understood that the city had a curfew for minors that was about 10:00 p.m.

Senior Deputy City Attorney Seto stated that she did not know of a curfew.

Commissioner Sharma stated that he had a teenager, and he believed that the curfew was about midnight for those driving.

Mr. Riter stated that minors usually rock climbed or played volleyball with friends or parents until about 10:00 p.m. Sometimes, they chose to have something to eat in the restaurant. Identification was checked at that time.

Commissioner Lydon asked if the minors using the restaurant would be in the bar area. He asked how "occasional" presence of a band or some kind of live music was defined.

Mr. Riter replied that minors were allowed in the bar area, but their identification was checked and a wristband was issued. However, minors could not sit at the bar. "Open jump" was on Saturday nights until 9:00 p.m. where families could bring their children to jump and slide on the inflatables. The vision for this facility was to provide participation activities for adults (and children) as opposed a main activity of drinking. Activity directors were available, such as cruise directors on cruise ships. Live music encompassed more than rock bands. A well-known Hawaiian guitarist was planned for Mother's Day entertainment, which needed approval by the Planning Commission. He questioned that six security guards would be required to be present on Mother's Day when the live music was available. When they first opened the facility, they had rock/punk bands play and they were unhappy with the type of customer that followed that kind of music. They would probably have some kind of live music up to three times a month and never on Saturdays. They used to have a DJ on Thursdays to provide music for people who used the restaurant after the volleyball tournaments.

Chairperson Harrison clarified that the bar and restaurant were both in the same area.

Commissioner Sharma asked if these live events had initially been held without a permit, and the city had informed him that he needed to undergo the permitting process before live music would be allowed to continue.

Mr. Riter stated that he was correct.

Commissioner Sharma asked if the applicant was holding live events from 9:00 p.m. to 2:00 p.m. and if the applicant could give an example where he might need the number of security guards that the city was requiring.

Mr. Riter agreed with the question about the live events. The city was requiring the six security guards. His worst-case scenario had been Nummi employees who had too much to drink. Two or three security guards were normal on Friday and Saturday nights.

Chairperson Harrison asked if the security guards were the applicant's employees or were they contract employees.

Mr. Riter replied that the guards were contract employees.

Chairperson Harrison opened the public hearing.

Mr. Riter closed by stating that his facility was opened with the expectation of creating an environment that would bring people together and to have a positive impact on the city. If live entertainment threatened their business plan, it would be eliminated, as had happened with a basketball program.

Commissioner Sharma asked, for the sake of argument, if the ownership changed, what would happen with the new owner?

Mr. Riter would agree to the condition staying only with the current ownership.

Chairperson Harrison closed the public hearing.

Senior Deputy City Attorney Seto clarified that zoning entitlements "ran with the land," so if the proposed modification were approved, it would go with the property not a particular business, such as City Beach, Inc.

Discussion ensued concerning how to provide long-term control of the entertainment at this facility, especially if the ownership changed.

Senior Deputy City Attorney Seto said that the Zoning Administrator could revoke this entitlement if a problem was brought to the city. Also, the Commission could ask to review this application at a specified time, such as every five years.

Commissioner Chan noted that the current conditions required a six-month review from the approval date.

Special Assistant Williams agreed and added that it would be just the first six months.

Commissioner Lydon stated that this Commission wanted the applicant to succeed, as the city needed a facility like this where the young people could be comfortable. However, "no good deed goes unpunished," and some unforeseen occurrence was bound to happen. He urged the applicant to be proactive with the city and to work with staff concerning anything that he was unhappy with.

Commissioner Chan concurred with Commissioner Lydon's remarks. Her only concern had to do with public safety. Young people were always looking for something to do, especially during the later hours. She was leery of something unpleasant occurring during nightclub instances.

Commissioner Weaver saw that this application as “a restaurant with music.” The aim was not the bar, but “the restaurant with something nice along with it, which seemed eminently reasonable.” She also agreed with Commissioner Lydon’s comments. She was not in favor of bringing this application back at regular intervals. The Zoning Administrator was already doing his job, since this application would not be before the Commission without the Zoning Administrator’s referral. The six-month review was enough. If this application caused police activity, she had no doubt that it would come back to the Commission through the Zoning Administrator.

Chairperson Harrison agreed with all previous comments. He would support staff’s recommendation. He was familiar with the restaurant and stated that it was in a great location. He reminded the applicant that the Commission (and staff) “had been burned before.” He wished the applicant well.

Commissioner Sharma was also familiar with the facility, as it was in his neighborhood. It was very clean and nice. He would still like to add the five-year review, for the record, because the ownerships of businesses do change.

Commissioner King would support the proposal.

Senior Deputy City Attorney Seto stated that because this was a Zoning Administrator permit, it would be handled at staff level. However, because the Zoning Administrator decided this application was appropriate for a public hearing, he had referred it to the Commission. In the future, if problems in the operation came to the Zoning Administrator’s attention, the application could be reopened, at staff level, either the approvals could be changed, conditions could be added or a reference could be made to the Planning Commission with a recommendation from staff.

Commissioner King asked if the Zoning Administrator changed the conditions, would the applicant have the right to appeal the decision to the Planning Commission.

Senior Deputy City Attorney Seto replied that the Planning Commission would be the next appeal level, whether it was the applicant, a resident or a citizen who was unhappy with the Zoning Administrator’s decision.

IT WAS MOVED (KING/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0)
THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

FIND PLN2005-00067 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY’S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN’S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THAT MITIGATED NEGATIVE DECLARATION PLN2001-00058 (APPROVED NOVEMBER 2000) HAS BEEN PREVIOUSLY PREPARED FOR THIS PROJECT. BECAUSE NO NEW IMPACTS HAVE BEEN IDENTIFIED, NO FURTHER ENVIRONMENTAL REVIEW IS NECESSARY;

AND

APPROVE PLN2005-00067, AS SHOWN ON STAFF ANNOTATED EXHIBIT “A”, SUBJECT TO FINDINGS AND CONDITIONS OF APPROVAL CONTAINED IN EXHIBIT “B”.

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0

ABSENT: 1 – Lorenz
RECUSE: 0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
 - Report on actions of City Council Regular Meetings
 1. Atria Townhomes GPA and R-3 Rezoning – 41762-41786 Fremont Blvd (Approved as recommended by PC)
 2. Union Street GPA and PD Rezoning – 3536 Union Street (Approved as recommended by PC)
 3. Grimmer Blvd GPA and PD Rezoning – 40990 Grimmer (Approved as recommended by PC)
 4. Density Bonus and Affordable Housing Incentives GPA and Zoning Text Amendment (Approved as recommended by PC)
 5. General and Restricted Industrial District Zoning Text Amendments (Approved as recommended by PC with minor modifications to the definition of “Sensitive Population and Employer Childcare Facilities). As a follow up action, staff will bring back a “Study District” rezoning for the Auto Mall Pocket area along the south side of Auto Mall Parkway between I-880 and I-680. The basic intent of the Study District will be to allow consideration of non-industrial uses until traffic and other studies can be performed for a General Plan Amendment and rezoning for the area. The Study District proposal will likely come before the Planning Commission in June and City Council in July.
 6. Ocotillo Parcel Map Appeal was continued to May 3, 2005 at the request of the applicant. The appeal may be further continued and the Commission will be informed of the final date.
- Discuss availability for May 12 Planning Commission dinner if May 12 PC meeting is canceled. If the date works, select a location.

Chairperson Harrison and two other Commissioners recommended dinner at the Buena Serra restaurant at the Hub.

Commissioner Weaver noted that heating lamps were provided, which would allow the diners to sit outside. The food was very good.

Commissioner King asked if the May 12th meeting was going to be cancelled.

Chairperson Harrison replied that the May 12th meeting would be cancelled and the Planning Commission and staff dinner could be held on that date, since the date had already been held by the Commissioners.

Commissioner Weaver clarified that since a date for the annual dinner had not been available at the beginning of the year, it was thought the date of the cancelled meeting was a good time to have it.

It was decided to meet for dinner at 6:00 p.m.

Senior Deputy City Attorney Seto announced that each diner would have to pay for his/her own meal.

- Information from Commission: Commission members may report on matters of interest.

Commissioner Sharma stated that some of the mail and invitations he had received arrived close to or after the date of the event. He asked if staff could open his mail and alert him to any event that was date sensitive.

A discussion ensued concerning time to plan in advance.

Commissioner Weaver noticed that the vacant lot on Walnut Avenue between Liberty Street and the next street up towards Fremont Boulevard was very shaggy and needed trimming, along with the lot at Walnut Avenue and Mission Boulevard.

Commissioner Lydon was certain that lot was probably on the weed abatement list and he was confident that the owners had been notified. It was up to the owners to make arrangements for the weed abatement.

Commissioner Sharma asked if the Sandhu portion of the report should be kept.

Senior Deputy City Attorney Seto stated that he could keep it, but additional information could be provided before the next hearing.

Meeting adjourned at 7:45 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Tom Williams, Secretary
Planning Commission